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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re JOSEPH C., a Person Coming Under the
Juvenile Court Law.

C086398

THE PEOPLE,

(Super. Ct. No. JV138059)

Plaintiff and Respondent,

v.

JOSEPH C.,

Defendant and Appellant.

Following entry of a negotiated plea to carrying a concealed firearm on his person, the minor Joseph C. challenges the juvenile court's denial of his motion to suppress evidence. We affirm the judgment.

FACTS AND PROCEEDINGS

Based on evidence discovered during a search of the minor, the People filed a juvenile wardship petition (Welf. & Inst. Code, § 602) alleging the minor committed a number of offenses related to being in possession of a firearm and ammunition. The petition also alleged attendant enhancement allegations.

The minor filed a motion to suppress evidence under Welfare and Institutions Code section 700.1. Following an evidentiary hearing, the juvenile court denied the motion. The minor then entered into a negotiated plea and admitted carrying a concealed firearm on his person. The juvenile court sustained the petition, adjudged the minor a ward of the court, and placed him on probation. The trial court dismissed the remaining counts and enhancements.

The evidence presented at the suppression hearing was as follows: Officers Finnicum and Wacker were working with several other gang unit detectives monitoring a funeral following two gang-related shootings and making enforcement stops as people were leaving the funeral service. The law enforcement officers wanted to prevent shootings at or after the funeral. They were concerned that the area in which the funeral was held was a high crime area with a lot of violent gang activity and that emotions at a funeral “run high” and could provoke retaliation.

Other gang detectives notified Finnicum and Wacker that a gold Chevy Cruze was leaving the funeral with two people inside. They followed the Chevy and saw something hanging from the rearview mirror of the car that could obstruct the driver’s vision in violation of the Vehicle Code, so they stopped the car. Finnicum asked the driver, D.C., for his driver’s license and D.C. informed him he did not have a driver license or proof of identification. The minor, who was sitting in the passenger seat, did not have identification either.

Wacker went to the passenger side of the car. When Finnicum advised Wacker that D.C. did not have valid identification, Finnicum removed D.C. from the car. Wacker stayed with the minor and continued to “small talk with him.” Finnicum searched D.C. for weapons and put him in the back seat of the patrol car. Since D.C. did not have a driver’s license, the officers planned to do a search inventory prior to towing and to look in the car for a photo identification of the driver. Wacker told the minor to get out of the car and conducted a pat down search of the minor for weapons.

In Wacker’s experience, people attending gang funerals commonly arm themselves. Because individuals leaving gang funerals are frequently armed, Wacker would never conduct a vehicle search, in which he would be distracted from the person outside the car without having searched that person for weapons because it would be easy for that person to assault and attack him while he was distracted by the search.

During the pat down, Wacker felt a hard metal object in the minor’s waistband that felt like part of a firearm. When he lifted the minor’s shirt, he saw the grip of a firearm sticking out from his front waistband. He pressed the minor’s body against the car to prevent him from possibly drawing the firearm. Then Finnicum joined Wacker and they handcuffed the minor and removed the firearm. The gun did not have a round in the chamber but did have eight cartridges in the magazine which was in the gun. Wacker did not find anything else in the car.

The juvenile court found the initial traffic stop was based on reasonable suspicion of a Vehicle Code violation. Upon learning that neither the driver nor the passenger had identification, the officers were permitted to asked them to step out of the car. The juvenile court found under the totality of the circumstances, including “that this vehicle was coming from a gang funeral. In the officer’s experience, emotions often run high. This was in a high-crime area. There was an [*sic*] legitimate interest in officer safety.

[¶] Given the need -- the officers had a given need to inventory the contents of the vehicle, as this vehicle was going to be towed. And the officer said they did not feel it

would be safe, reasonable or -- well, it would be unsafe for him to climb into this vehicle for purposes of inventory with the occupant -- . . . --just standing outside.” Accordingly, the juvenile court denied the motion to suppress.

DISCUSSION

The minor contends the juvenile court abused its discretion by denying his motion to suppress because Wacker did not have a reasonable suspicion he was armed and dangerous. He argues that notwithstanding his presence in a high crime area, there were no specific and articulable facts to justify the pat down search. The minor does not challenge the legality of the stop or the inventory search of the vehicle.

“In reviewing a trial court’s ruling on a motion to suppress evidence, we defer to that court’s factual findings, express or implied, if they are supported by substantial evidence. [Citation.] We exercise our independent judgment in determining whether, on the facts presented, the search or seizure was reasonable under the Fourth Amendment.” (*People v. Lenart* (2004) 32 Cal.4th 1107, 1119.) “Whether a search is reasonable must be determined based upon the circumstances known to the officer when the search was conducted.” (*In re H.M.* (2008) 167 Cal.App.4th 136, 144 (*In re H.M.*).)

“In the context of an ordinary traffic stop, an officer may not pat down a driver and passengers absent a reasonable suspicion they may be armed and dangerous.” (*People v. Collier* (2008) 166 Cal.App.4th 1374, 1377; see also *Knowles v. Iowa* (1998) 525 U.S. 113, 117–118 [142 L.Ed.2d 492]; *Terry v. Ohio* (1968) 392 U.S. 1, 27, 30 [20 L.Ed.2d 889] (*Terry*).) However, “a pat-down search for weapons may be made predicated on ‘specific facts or circumstances giving the officer reasonable grounds to believe’ that defendant is armed [citation] or on other factors creating a potential for danger to the officers.” (*People v. Superior Court (Brown)* (1980) 111 Cal.App.3d 948, 956.) The “protection of police and others can justify protective searches when police have a reasonable belief that the suspect poses a danger.” (*Michigan v. Long* (1983)

463 U.S. 1032, 1049 [77 L.Ed.2d 1201, 1219-1220].) “[L]aw enforcement officers have a legitimate need to protect themselves even where they may lack probable cause for an arrest. [Citation.] The officer has an immediate interest in taking steps to ensure that the person stopped ‘is not armed with a weapon that could unexpectedly and fatally be used’ against the officer. [Citation.]” (*In re H.M.*, *supra*, 167 Cal.App.4th at p. 143, citing *Terry*, at pp. 23-24.) “[T]he officer need not be absolutely certain that the individual is armed; the crux of the issue is whether a reasonably prudent person in the totality of the circumstances would be warranted in the belief that his or her safety was in danger.” (*People v. Avila* (1997) 58 Cal.App.4th 1069, 1074, citing *Terry*, at p. 27.)

The pat down search here meets these standards. The officers were part of a gang unit monitoring the funeral of two gang related shootings. The funeral took place in a high crime area, rife with violent gang activity. In their experience, Wacker and Finnium were aware that such occasions also often provoke retaliatory shootings. In Wacker’s experience, people attending gang funerals are frequently armed. Other gang unit officers saw the car the minor was in leaving the gang funeral and reported that to Wacker and Finnium. Seeing a possible traffic violation, Wacker and Finnium lawfully stopped D.C. and the minor.

When D.C.’s lack of identification or a valid driver’s license necessitated an inventory search of the car, Wacker conducted the pat down search of the minor to ensure the minor was “not armed with a weapon that could unexpectedly and fatally be used” against him while he was distracted searching the car. (*Terry*, *supra*, 392 U.S. at p. 23.) It is “common knowledge that members of criminal street gangs often carry guns and other weapons,” and often resort to “ ‘physical violence and gunfire’ ” (*In re H.M.*, *supra*, 167 Cal.App.4th at p. 146.)

Under the facts here known to Wacker, and reasonable inferences derived from those facts, it was reasonable for him to determine whether the minor was armed to protect Wacker’s and Finnium’s safety. (*Terry*, *supra*, 392 U.S. at p. 27; *People v.*

Mendoza (2011) 52 Cal.4th 1056, 1081-1082.) Looking to the totality of the circumstances, the pat down search did not violate the Fourth Amendment.

“The judiciary should not lightly second-guess a police officer’s decision to perform a patdown search for officer safety. The lives and safety of police officers weigh heavily in the balance of competing Fourth Amendment considerations.” (*People v. Dickey* (1994) 21 Cal.App.4th 952, 957.)

DISPOSITION

The judgment is affirmed.

HULL, J.

We concur:

RAYE, P. J.

HOCH, J.